



# Kentucky Tax Alert



A KRC PUBLICATION FOR THE TAX PROFESSIONAL

May 2000 • Vol. 19, No. 3

## Summary of Tax Legislation Enacted by the 2000 General Assembly

*This legislative issue of Kentucky Tax Alert was compiled by staff members of the Division of Tax Policy.*

Following is a brief description of bills enacted by the 2000 General Assembly that will be of interest to taxpayers. Unless noted, the effective date will be July 14, 2000. However, the actual implementation date for most property tax bills will be Jan. 1, 2001, which is the beginning of the next assessment cycle. Copies of bills can be obtained from the Legislative Research Commission (LRC) and are also available on the LRC website at <http://www.lrc.state.ky.us/home.htm>.

### General Administration

**Electronic Funds Transfer**—KRS 131.155 was amended to require that all electronic funds transfer payers remit payment to the Kentucky Revenue Cabinet (KRC) by the debit method or other means as prescribed by the Cabinet. KRC may also require reporting agents whose aggregate payment on behalf of multiple taxpayers is in excess of the threshold or anyone who reports and pays for more than 100 individual accounts, to remit all payments via electronic funds transfer. The current threshold for mandatory electronic funds transfer established by administrative regulation (103 KAR 15:070) is \$25,000. **(HB 536)**

**Electronic Commerce**—New sections of KRS Chapter 369 were created to adopt the Uniform Electronic Transactions Act (UETA) drafted by the National Conference of Commissioners on Uniform State Laws to provide uniform rules to govern transactions in electronic commerce in every state. The Governor's Office for Technology is designated to set standards for the use of electronic records and signatures that promote consistency and interoperability between governmental agencies. **(HB 571)**

**Intentional Unauthorized Browsing**—KRC employees or any other person authorized to access confidential state tax information are prohibited from intentionally viewing such information without an official need to view. Penalties of up to \$500 and up to six months in jail are provided. Penalties for divulging state information are increased to \$1,000 and one year in jail. Penalties for intentional unauthorized inspection of federal information continue to be up to \$1,000 and up to one year in jail while divulging federal information would remain up to \$5,000 and up to five years in jail. Intentional unauthorized inspection or divulging of either state or federal information could result in loss of employment. This legislation is consistent with the Taxpayer Browsing Protection Act which became federal law in August 1997 for the purposes of federal tax information. **(HB 822)**

**Child Support**—KRC is directed to work with the Cabinet for Families and Children to develop a system for information sharing that would enhance child support collections. **(SB 218)**

### Administrative Regulations

**Notice to Affected Entities**—An administrative body filing an ordinary administrative regulation that establishes or increases fees is

now required to notify each state association, organization, or other body representing a person or entity affected by the administrative regulation. KRS 13A.190 was amended to expand authorization for promulgation of an emergency administrative regulation to include the prevention of loss of state funds, as well as federal funds, and KRS 13A.222 was amended to allow administrative regulations to cite popular names of federal or state laws. A new section of KRS Chapter 13A was created to establish a procedure for review of administrative regulations during a legislative session. **(HB 856)**

**Notice to Primary Sponsor**—An administrative agency promulgating an administrative regulation as the result of a statute enacted by the General Assembly is now required to provide a copy of the notice of intent to the primary sponsor, if still serving, or if not serving to the chair of the appropriate legislative committee. **(SB 206)**

### Income Tax

**Internal Revenue Code (IRC) Update and Innocent Spouse Relief**—(Effective for taxable years beginning after Dec. 31, 1999.) Updates the IRC reference date in KRS 141.010(3) to Dec. 31, 1999. This bill also changes the IRC reference for innocent spouse relief in KRS 141.180 from Sec. 6013(e) to Sec. 6015. **(HB 176)**

New laws enacted by Congress and included in this update are as follows:

- Surface Transportation Revenue Act of 1998 (Title IX of H.R. 2400, P.L. 105-178) enacted on June 9, 1998.
- Internal Revenue Service Restructuring and Reform Act of 1998 (H.R. 2676, P.L. 105-206) enacted on July 22, 1998.
- Tax and Trade Relief Extension Act of 1998 (Division J of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, H.R. 4328, P.L. 105-277) enacted on Oct. 21, 1998.
- Ricky Ray Hemophilia Relief Fund Act of 1998 (Sec. 103(h) of H.R. 1023, P.L. 105-369) enacted Nov. 12, 1998.
- Tax Relief Extension Act of 1999 (Title V of the Ticket to Work and Work Incentives Improvement Act of 1999, H.R. 1180, P.L. 106-170) enacted on Dec. 17, 1999.

**Income from Tobacco Settlement**—(Effective for tax years beginning after Dec. 31, 1998.) Senate Bill 247 enacted by the 1998 General Assembly provided that amounts received by a producer of tobacco or a tobacco quota owner from a national settlement agreement between the tobacco industry and state attorneys general are excluded from Kentucky adjusted gross income in the case of taxpayers other than corporations. This bill clarifies that exclusion by specifically referring to the Master Settlement Agreement signed on Nov. 22, 1998, and the settlement fund referred to as "Phase II." The bill extends this exclusion to corporations.

The bill also provides for the exclusion of amounts received from the Tobacco Loss Assistance Program administered by the Commodity Credit Corporation. The program authorized under Public Law 106-78, Title 8, Sec. 803 provides funds for reductions in the quantity of the tobacco quota allotments. **(SB 49)**



**Unitary Refund Claims and Assessments**—(Effective for taxable years ended prior to Dec. 31, 1995.) KRS 141.200 is amended to retroactively prohibit taxpayers or KRC from changing a corporation's income tax filing status from separate entity basis to a combined return under the unitary business concept. Any claim for refund or credit made after Dec. 22, 1994, based on a change of filing status from separate entity basis to a combined return under the unitary business concept shall not be recognized for any purpose. Also, any assessment of tax after Dec. 22, 1994, based on requiring a change from a separate return basis to a combined return basis under the unitary business concept shall not be recognized for any purpose. **(HB 541)**

**Income Tax Credit for the Purchase of Kentucky Coal**—(Effective for 10 consecutive years beginning on July 15, 2001.) KRS Chapter 131 is amended to allow a nonrefundable credit against corporation income tax, individual income tax, corporation license tax and public service company property tax for Kentucky coal purchased and used for the purpose of generating electricity. Only coal that is subject to Kentucky's coal severance tax qualifies for the credit. The credit is equal to \$2 per ton of Kentucky coal purchased by the company that is above the amount of Kentucky coal purchased during the base year. The base year amount is the amount of coal purchased in 1999 for existing companies. For new entities, the base year amount will be zero. **(HB 805)**

**Economic Opportunity Zones**—KRS Chapter 154 is amended to allow the Economic Development Cabinet to establish economic opportunity zones to encourage the location and expansion of manufacturing, service or technology industries. Kentucky Rural Economic Development Act (KREDA) counties qualify as economic opportunity zones. Approved companies are allowed a credit against the corporation income tax or individual income tax equal to the income tax that would be due from the net income of the project. Approved companies may also impose a wage assessment fee not to exceed 5 percent of the gross wages of qualified employees. The assessment fee is to be deducted from the wages the approved company pays to the qualified employee. The employee shall be entitled to a credit against Kentucky income tax withholding (4 percent maximum) and local occupational license fee (1 percent maximum) equal to the total amount of the assessment fee. The credits may be taken for a period of up to 10 years. **(SB 225)**

**Kentucky Industrial Development Act**—(Effective April 21, 2000.) KRS 154.28-110 is amended to increase the job assessment fee that an approved company may withhold from its employees from 2 percent to 3 percent. **(HB 330)**

**Skills Training Investment Tax Credit**—(Effective for taxable years beginning after Dec. 31, 1999.) KRS 141.405 is amended to allow S corporations and partnerships to pass through the skills training investment tax credit to shareholders and partners. Technical corrections were made to the various economic development incentives. **(HB 381)**

**Kentucky Industrial Revitalization Act (KIRA) Tax Credits**—(Effective for taxable years beginning on or after Dec. 31, 1999.) KRS Chapter 136 and KRS 154.26-010 are amended to expand the KIRA tax credit to apply to corporation license tax in addition to corporation income tax. The license tax credit is calculated based on the capital attributable to the approved industrial revitalization project and is subject to the same credit limits as the corporation income tax KIRA credit. **(HB 996)**

**Enterprise Zone Tax Credits**—(Effective April 21, 2000.) KRS 154.45-010 is amended to define "employee," "qualified employee," "seasonal business," and "seasonal employee" to enable a business whose workforce is comprised of at least 80 percent seasonal employees to qualify for tax credits and exemptions provided by KRS 154.45-90 to businesses located within an enterprise zone. The tax credits and exemptions are for corporation income tax, sales and use tax, motor vehicle usage tax, and local property tax. **(HB 287)**

**Kentucky Rural Economic Development Act (KREDA) Tax Credits**—KRS 154.22-100 is amended to allow KREDA approved companies with financing agreements in effect before July 15, 1996,

to elect to change the job development fee rate from 6 percent to 4 percent. Prior law required the election before June 30, 1997. **(SB 394)**

**Tax Credit for Employers Who Assist Employees in Obtaining His or Her High School Equivalency Diploma**—A new section of KRS Chapter 151B was created to provide an employer a state income tax credit for a portion of the released time given to the employee to study for the General Educational Development tests. The credit is calculated by multiplying 50 percent of the hours released for study by the student's hourly salary. The credit shall not exceed \$1,250. **(SB 1)**

## Miscellaneous Taxes

### Health Care Provider Tax

**Health Care Provider Tax**—Outpatient Prescription Drugs—KRS Chapter 142 was amended to phase out the provider tax on outpatient prescription drugs by HB 315 and HB 321 enacted during the 1998 session of the General Assembly, with an effective date of July 1, 2000. The phase out was confirmed during the 2000 session. **(HB 502)**

### Severance Tax

**Limestone Used in the Manufacturing of Cement**—A new section of KRS Chapter 143A is created to provide that limestone used to manufacture cement by an integrated miner and manufacturer of cement shall be taxed at 14 cents per ton. **(HB 176)**

**Thin Seam Coal Tax Credit**—A new section of KRS Chapter 143 is created to provide a nonrefundable tax credit against the coal severance tax for coal mined from thin seams or with a high mining ratio. The credit varies between 1.5 percent and 3.75 percent of the gross value of mined coal, depending on coal thickness, mining ratio, and sulfur content. **(HB 892)**

### Motor Fuels Tax

**Motor Fuels Tax Exemptions**—KRS 138.358 and 138.344 are amended to allow a purchaser of dyed nonhighway special fuels to be exempt from paying the motor fuels excise tax, rather than being required to pay the excise tax and file for a refund. KRS 138.358 is also amended to exempt commercial heating fuel from the special fuels tax. **(HB 911)**

### Insurance Tax

**Captive Insurers**—New sections of KRS Chapter 304 are created to specify the lines of insurance business authorized for captive insurers. This includes filing requirements for licensure, minimum capital requirements, reporting requirements, examinations, and revocation of licenses, investments authorized, reinsurance procedures, taxes applicable, and the comprehensive regulation of the captive insurer. **(SB 245)**

### Alcoholic Beverage Tax

**Small and Farm Wineries**—KRS 243.884 is amended to extend the wholesale tax exemption on wine produced from out-of-state products until June 30, 2004. **(HB 663)**



### Pari-Mutuel Racing Tax

**Pari-Mutuel Racing Tax Credits and Reduced Rate**—KRS 138.510 is amended to provide a tax credit to any track with average daily handle of \$1.2 million or more and requires the credit amount be used for capital improvements and horsemen's incentives. KRS 138.510 is also amended to reduce the excise rate for any licensed track with total annual handle of \$250,000 or less and directs amount of rate difference to promotion of live meets and facilities. **(HB 502)**

### Inheritance Tax

**Inheritance and Estate Tax**—KRS 132.420, 140.160, 140.190, 140.990, 289.391, and 395.605 are amended to clarify the filing requirements for those estates that are still subject to tax. Also, several

sections of the Inheritance and Estate Tax statutes that are no longer needed were repealed due to the phaseout of the tax on Class A beneficiaries enacted by the 1995 second extraordinary session of the General Assembly. **(HB 545)**

### Property Tax

**Homestead Exemption**—The homestead exemption for totally disabled persons was extended to include qualified individuals who die before the end of the taxable year. **(HB 158)**

**Watershed Conservancy Districts**—The language in KRS 262.760 which had limited property tax rates levied by watershed conservancy districts taxing jurisdictions to "five (5) mills per dollar of the fair cash value" was replaced with an unlimited "millage rate or per acre rate." **(HB 277)**

**Manufactured Housing**—Owners of manufactured homes which are permanently affixed to real estate may now file an Affidavit of Conversion to Real Estate with the county clerk who is required to file this document in the miscellaneous record book and furnish the property valuation administrator (PVA) with a copy for assessment purposes. **(HB 348)**

**PVA Salaries**—KRS 132.385 and 132.590 were amended to change the calculation of compensation for PVAs to match the method used for other county officials. PVAs' salaries will be determined according to a statutory schedule based on annual census estimates adjusted annually by the consumer price index. **(HB 538)**

**Installment Payments on Delinquent Real Estate Taxes**—County attorneys may now enter into agreements with taxpayers to accept installment payments on delinquent real estate taxes. **(HB 556)**

**School District Rate Certification**—The Department of Education is now required to certify tax rates of school districts upon the receipt of certifications from KRC. **(HB 668)**

**County Attorney's Fee on Certificates of Delinquency**—The county attorney's 20 percent fee is now waived if the taxpayer pays the certificate of delinquency within five days of the sheriff's sale. **(HB 719)**

**Development Rights**—A property tax levy associated with a purchase of development rights/parks maintenance program is now exempted from the recall (HB 44) provisions of KRS 132.017. **(HB 742)**

**Goods in Transit**—Effective Jan. 1, 2000, KRS Chapter 132 exempts goods in transit from the state property tax, and phases out the property tax levied on goods in transit by cities, counties, and school districts over a three-year period. However, fire districts and special taxing districts may continue to assess goods in transit. **(HB 749)**

**Electronic Certificate of Delinquency**—KRS Chapter 134 was amended to provide that county clerks may provide a certified electronic certificate of delinquency in lieu of delivering a certified copy of the certificate of delinquency, and also clarifies some of the language of HB 568 (1998). **(HB 807)**

**PVA Deputy Annual Leave and Compensatory Time**—PVA deputies may now receive lump-sum payments for accrued annual leave and compensatory time when separated from employment (pending regulation). **(HB 824)**

**Tax Increment Financing**—Cities and counties may now create development areas for the purpose of stimulating economic development through tax increment financing. **(HB 852)**

**Floodplain Management**—For purposes of floodplain management, all property must be assessed by the PVA at 100 percent of its fair market value. This bill had an emergency clause which made the provisions effective March 29, 2000. **(HB 957)**

**County Budgets**—KRS 68.260 now requires the passage of county budgets by July 1. Fiscal Courts may amend budgets based on information contained in KRC's certification. **(SB 101)**

**Quadrennial Review of Unmined Minerals and Public Service Property**—KRS 132.820 and 136.120 now allow a quadrennial review program to be utilized in the unmined minerals and public service property tax areas. **(SB 323)**

**Intangible Personal Property Tax**—KRS Chapters 132 and 136 were amended to exempt shares of stock from the intangible personal property tax, in order to align the statutes with the Kentucky Supreme Court decision in *St. Ledger v. Revenue Cabinet*. **(SB 336)**

**Tax Increment Financing**—A pilot program for tax increment financing was authorized to be established in Jefferson County, with state and local revenues to be identified and distributed by the sheriff to local development agencies. **(SB 372)**

### Sales And Use Tax

#### Modifications to the 1996 Tourism Development Act

**Tourism Attraction Definition**—Effective Feb. 7, 2000, a "tourism attraction project" eligible for sales tax inducements may now include a lodging facility that involves the restoration or rehabilitation of a structure listed individually in the National Register of Historic Places or is located in a National Register Historic District and is certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council. **(HB 43)**

**Advance Tourism Project Sales**—The completion date of a "tourism attraction project" may be up to three years from the date of final approval rather than the previous two-year requirement. This bill also allows tax collected on sales occurring before the project completion date but after the final approval of the project to be refundable with the approved company's first fiscal year refund. These changes do not alter the ten-year inducement period that begins on the project completion date. **(HB 811)**

#### Additional Exemptions

**Metal Retail Fixtures**—Effective Aug. 1, 2000, metal retail fixtures (check stands and belted and nonbelted checkout counters) manufactured in Kentucky and purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle, postal service, common carrier, or contract carrier to a location outside this state will not be subject to the Kentucky sales tax. This exemption applies regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination. **(HB 660)**

**Cervid Exemption**—Effective July 1, 2000, members of the genus cervidae (deer and elk) used in an agricultural pursuit for the production of hides, breeding stock, meat, and cervid by-products will be exempt from sales and use tax. Feed and feed additives, insecticides, fungicides, herbicides, rodenticides, and other chemicals used in this pursuit will also be exempt. In addition, equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the on-site facilities will be exempt from the sales and use tax. **(HB 502)**



**Wheelchair Parts and Certain Ostomy Supplies**—Effective Aug. 1, 2000, wheelchair repair and replacement parts and urostomy and ileostomy supplies will be classified as physical aids exempt from sales and use tax when purchased by an individual for private use. **(SB 86)**

#### Other Provisions

**Aviation Jet Fuel**—During the 1998 General Assembly, HB 444 was enacted to change the credit certificated air carriers are allowed against Kentucky sales and use tax paid on aircraft fuel, including jet fuel, for fiscal years beginning



after June 30, 2000. Effective July 1, 2000, certificated air carriers shall pay tax up to \$1 million on their purchases of aircraft fuel, including jet fuel. Prior to this legislation, the cap was set at \$4 million. House Bill 502, recently enacted by the 2000 General Assembly, increased the \$1 million cap in certain circumstances to reflect the Kentucky sales and use tax due on aviation fuel attributable to any other company purchased, merged, acquired, or otherwise combined with the certificated air carrier after the base period. The increase in the cap shall be the amount of Kentucky sales and use tax applicable to such aviation fuel purchased during the 12-month period immediately preceding the purchase, merger, or other acquisition by or combination with the certificated air carrier. **(HB 502)**

**Transient Room Tax**—Two bills provide for an increase in the local transient room tax imposed on motels, hotels, inns, or similar accommodations providers. **HB 584** provides for the levy of an additional 1 percent room tax to finance the construction or operation of a governmental or nonprofit convention center or fine arts center useful to the promotion of tourism located in the central business district of a city of the second class. **HB 656** provides for the levy of an additional 2 percent room tax by urban county governments to defray the operating costs of the Lexington Center Corporation. This bill also deletes the sunset provisions of the transient room tax for the retirement of bonds used to finance the Lexington Center Corporation. All affected parties need to be aware that the transient room tax, including the additional rates above, is a license tax imposed on the accommodations provider rather than on the ultimate consumer or purchaser of accommodations services. Therefore, any cost for the transient room tax passed on to customers is part of gross receipts subject to sales tax. **(HB 584, HB 656)**

**Communications Services**—Effective Jan. 1, 2001, sales tax will be due on additional communications services such as interstate long distance. The law expands the tax on intrastate telegraphic and

telephonic communications to include communications services that originate in this state, terminate in this state, or both originate and terminate in this state. This bill also extends the meaning of "tangible personal property" to include prepaid calling arrangements such as prepaid telephone calling cards. Therefore, sales tax will be due at the time these prepaid calling arrangements are sold rather than at the time the arrangement is utilized for a communications service.

In addition, this law will provide a refundable credit to any business whose annual communications service costs exceed 5 percent of the business's Kentucky gross receipts. **(HB 996)**

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**Kentucky Tax Alert** is a bimonthly publication printed on recycled paper, the costs of which are paid from state funds.

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Kentucky and its citizens, and admin-  
ister the tax laws of the Common-  
wealth in a fair and impartial manner.

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